

# **WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES DECEMBER, 2012**

The cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol.

This calendar includes cases that originated in the following counties:

Marathon  
Washington

## **TUESDAY, DECEMBER 4, 2012**

9:45 a.m.	10AP3034-CR	-	State v. Kenneth M. Sobczak
10:45 a.m.	{11AP1044-CR	-	State v. Dale R. Neumann
	{11AP1105-CR	-	State v. Leilani E. Neumann

In addition to the cases listed above, the following case is assigned for decision by the court on the last date of oral argument based upon the submission of briefs without oral argument:

11AP984-D	-	Office of Lawyer Regulation v. Timothy J. Riordan
10AP1576-D	-	Office of Lawyer Regulation v. Jeffrey A. Reitz
11AP1764-D	-	Office of Lawyer Regulation v. Jeffrey A. Reitz

The Supreme Court calendar may change between the time you receive these synopses and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-271-4321. Summaries provided are not complete analyses of the issues presented.

**WISCONSIN SUPREME COURT**  
**TUESDAY, DECEMBER 4, 2012**  
**9:45 a.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Washington County Circuit Court decision, Judge Patrick J. Faragher, presiding.*

2010AP3034-CR

[State v. Sobczak](#)

This case involves charges of possession of child pornography and examines whether a temporary houseguest may consent to a police search of a host's home and a computer located inside.

Some background: Kenneth M. Sobczak, an adult, lived with his parents. While his parents were away on vacation, Sobczak invited a girlfriend to stay with him at his house for the weekend. She arrived on Friday evening and spent the night. Late in the afternoon on Saturday, Sobczak left to go to work and she stayed at the house. Before Sobczak left, the girlfriend asked him if she could use his laptop computer, as she had no transportation to leave the residence and nothing to do while he was gone. Sobczak agreed that she could use it during his absence.

After Sobczak left, the girlfriend began using the computer. She said an error message appeared on the screen, and she opened a file that contained a video showing two naked females, who appeared younger than 18 years of age, engaged in sexual activity.

The girlfriend walked to a nearby gas station and called her grandmother, who called the police. She then returned to the front porch of Sobczak's home, where she explained the situation to a police officer. The officer told the girlfriend they either needed to go inside to view the video or she needed to bring the laptop to him, whichever was more comfortable for her. The girlfriend responded that they could go inside and that the laptop was on a couch that was 20-30 feet inside the front door. The girlfriend then led the officer into the residence and to the couch, where she showed the video to the officer.

The officer seized the computer and took it with him to the police department. Later that same evening, the police obtained and executed a search warrant for the rest of the Sobczak residence.

The state charged Sobczak with possession of child pornography. Sobczak filed a motion to suppress, claiming that his girlfriend had neither actual nor apparent authority to give consent to a search of the Sobczak home.

The circuit court concluded that as a guest of the Sobczak house, the girlfriend had actual authority to allow the police to enter the home and to search Sobczak's computer. After the circuit court denied the suppression motion, Sobczak entered a no contest plea.

The Court of Appeals affirmed. Although it acknowledged that a "mere guest in a home may not ordinarily consent to a search of the premises," the Court of Appeals stated that when "the guest is more than a casual visitor" and has "the run of the house," the guest may consent to a search of the residence. The Court of Appeals concluded that the girlfriend here had sufficient authority to consent to the police entry into the Sobczak home. Further, the Court of Appeals concluded that because Sobczak had given her express permission to use his laptop, the girlfriend also had authority to consent to the officer's search and seizure of that particular item.

Sobczak contends the Court of Appeals' decision runs counter to the generally accepted rule that a temporary guest may not consent to a search of the host's home and to the Wisconsin Supreme Court's determination in State v. McGovern, 77 Wis. 2d 203, 252 N.W.2d 365 (1977) that there is no distinction between an entry into a home and a search of the home by the police.

**WISCONSIN SUPREME COURT**  
**TUESDAY, DECEMBER 4, 2012**  
**10:45 a.m.**

*This is a certification from the Wisconsin Court of Appeals, District III (headquartered in Wausau). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Marathon County Circuit Court, Judge Vincent K. Howard, presiding.*

2011AP1044-CR/2011AP1105-CR [State v. Neumann](#)

This certification involves consolidated appeals that raise issues related to statutory construction, constitutional rights and appropriate jury instructions for persons charged with reckless homicide based on their choice to rely on prayer rather than medical treatment for an ill child.

Some background: The defendants, Dale and Leilani Neumann, were the parents of 11-year-old Madeline Kara Neumann, who died from uncontrolled diabetes mellitus. Madeline had been showing symptoms of illness for approximately two weeks before her death on March 23, 2008.

The emergency room doctor who examined Madeline said hers was the most advanced case of juvenile diabetic ketoacidosis (DKA) he had ever seen. The doctors who testified at trial agreed that DKA is survivable, and the prognosis for a still breathing DKA patient with a heartbeat is very good. One doctor who testified at trial said he believed Madeline's DKA was treatable and that her chances of survival were high until well into the day of her death.

The Neumanns were both charged with second-degree reckless homicide, contrary to § 940.06(1), which provides: "whoever recklessly causes the death of another human being is guilty of a Class D felony." They claimed a statutory right under § 948.03(6), the child abuse statute, and a constitutional right to substitute prayer for medical treatment.

Two weeks before her death, Madeline began experiencing fatigue, thirst, and frequent urination. Three days before her death, she would have appeared generally healthy to a casual observer. On March 21, 2008, Mrs. Neumann noticed that Madeline was very tired, but no one believed she was suffering from a serious illness. On March 22, Madeline said she was feeling tired. Mrs. Neumann told her to stay home and rest rather than working at the family's coffee shop. When Mrs. Neumann returned from work, she noticed that Madeline's legs were skinny and blue. Mrs. Neumann massaged Madeline's legs, and the Neumanns prayed over her. Mrs. Neumann said she believed Madeline was under spiritual attack and that prayer was the only answer.

The family enlisted help from others to pray for Madeline. Dale Neumann broadcasted an e-mail seeking emergency prayer and assistance from a church elder. Neumann's father suggested using Pedialyte since Madeline seemed dehydrated, but Leilani Neumann said, "That could be taking the glory from God." The family believed Madeline's health had improved later that night because her breathing was easier and more regular and her hands were warmer. On the morning of March 23, Mrs. Neumann described Madeline's condition as comatose and hanging

between life and death. At 1:30 p.m., Madeline's parents expressed optimism about her prognosis but an hour later she stopped breathing.

The defendants were convicted, following separate jury trials, of one count of second-degree reckless homicide. They were each sentenced to 10 years of probation, with six months in the county jail stayed. In addition, each parent was ordered to serve 30 days in jail during the month of March, every other year, for six years.

Both parents separately appealed, asking for review on several issues, including due process rights, jury instructions, effectiveness of counsel, and whether the statutory exemption for faith healing applies.

The Neumanns argue jury instructions negated the prayer treatment privilege granted by the child abuse statute and that the instructions violated their constitutional right to direct the medical care for their child. The state reiterates that the prayer exception is not applicable to the homicide statute and that the general right of parents to make decisions about their children's care does not prohibit the state from imposing a medical obligation on a parent necessary to preserve a child's life.

In certifying the case, the Court of Appeals asks the Supreme Court, in part, "to determine the scope of the prayer treatment exception and to inform trial courts regarding the appropriate jury instructions when that exception is raised in a reckless homicide case."